IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

FAMILY COURT APPEAL NO.89 OF 2002

Mr.Devidas Tulsiram Bute, )
Aged 50 years, Occ: Service, )
presently residing at C/o.A.M.Gharat, )
B-303, Bhandup Koliwada CHS Ltd., )
Bhandup (East), Mumbai - 400 042. ).. Appellant
( Org.Petitioner)

Vs.

Mrs.Lata W/o.Devidas Bute, )
Aged 42 years, Household, )
residing at 18/964, MHB Colony, )
Kher Nagar, Bandra (East), )
Mumbai - 400 051. ).. Respondent
(Org.Respondent)

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Shri R.A.Shaikh for the Appellant.

Shri S.J.Ghogare for the Respondent.

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CORAM : R.M.S.KHANDEPARKAR &

ANOOP V. MOHTA, JJ.

DATED : 10th JUNE, 2005.

ORAL JUDGMENT : ( Per Anoop V. Mohta, J )

1. The present appeal is filed by the appellant-husband thereby challenged the impugned

order dated 28th March, 2002 passed by the Family Court, Mumbai, whereby, the petition dated 23rd January, 1998, under Section 13(1)(ia) of the Hindu Marriage Act, 1955 ( for short H.M.Act), on the ground of cruelty by the respondent-wife was dismissed.

2. The respondent-wife by filing written statement on 16th October, 1998 resisted the same. The maintenance Petition No.E-674 of 1998 was filed by the respondent-wife under Section 125 of the Code of Criminal Procedure ( for short Cr.P.C.), which was resisted by the appellant-husband by his written statement dated 7th May, 1999.

3. The appellant and respondent married on 9th June, 1974. They have two sons and two daughters. After allegation and counter allegation and a criminal case by the respondent-wife against the appellant-husband in the year 1997, parties started living separately. Therefore, above referred proceedings.

4. The common issues and evidence were recorded. Based on the same, the learned Judge of the Family Court, Mumbai, after considering the evidence led by the parties, dismissed the petition of the husband and

partly allowed the maintenance application filed by the wife.

5. Heard the learned counsel appearing for the parties. After going through the reasoning given by the learned Judge of the Family Court, Mumbai, and the evidence led by both the parties, we are convinced that there is no case made out by the appellant-husband for interference in the impugned judgment, only on the issue of adultery, as contended by the learned counsel appearing for the appellant. No other challenge was raised on any count. We are convinced by the reasoning given by the learned Judge of the family Court in paragraph 14 of the impugned judgment, after scrutinising the pleadings and the evidence on the record. The relevant reasoning is reproduced as follows.

> "It is material to note that for such incidents of alleged adultery, normally evidence is word against word for the husband and the wife. However, subsequent conduct to such incident is a material circumstance for coming to a conclusion about the truth for the versions of either of the parties to the dispute. Though husband has deposed that he

saw that his wife and Pandharinath were in compromising position, husband has not deposed about immediate action on his part for disputing the said behaviour of his wife and Pandharinath. It was possible for the husband to call near relatives of his wife and disclose the said alleged incident to them and take immediate action for separation and even for divorce. Husband has failed to depose about the said immediate action on his part without assigning any reason. It is further material to note that the said Pandharinath is nephew of husband. As such it was possible for him to take immediate action for throwing Pandharinath out of the residence even by calling hi own relatives. Here again husband has not acted accordingly without any explanation. As such immediate inaction on the part of the husband is a circumstance to disbelieve his version. So also non-action during the subsequent period is another circumstance to disbelieve his version."

6. The learned counsel appearing for the appellant further submits that the marriage is irretrievably broken and as they are living

separately, therefore, such other order may be passed in this appeal itself. We are concerned with the present divorce petition and the appeal in question. There is no supporting material on the record to consider the same as the respondent-wife's counsel has not supported the same, and as she is not ready to give divorce. We see no reason to pass any other order. The parties are at liberty to take appropriate steps, if so advised.

7. In view of the above reasoning and considering the other contentions as well as the records of the matter, we see no case is made out for interference. The impugned judgment is confirmed. The appeal is dismissed with no order as to costs.

( R.M.S.Khandeparkar, J )

( Anoop V. Mohta, J )